ing. They leave out the statute which the Idaho Court on March 25, 1933, held controlled the sale complained of, pages 46 and 50, Transcript, by Judge Reed. This decision was approved and confirmed in the latter case by Judge Elder, pages 62 to 65.

STATEMENT OF THE FACTS

This case in the Federal Court is a culmination of lengthy litigation covering a long period of years, consisting of some four cases in the State Court, and three cases in the Federal Court, including this one. The whole litigation has been caused and brought about by the attempt of some of the land owners in Drainage District No. 1 to evade the payment of assessments which they themselves had caused to be made on their own land in the District for the purpose of reclaiming the same, as well as to evade the annual maintenance in keeping the water from the land each year in order that they could farm the land and secure large crops therefrom, and of which maintenance charges they had secured the full value. In this they were actively assisted by the various Boards of County Commissioners of Boundary County, Idaho, and other Boundary County officials who deliberately refused to perform their duties and take tax deeds to the land when the period provided by law had expired, but allowed the owners who refused to pay, which consisted of less than one-half of the land in the District, to remain on the land, allowing the annual assessments for upkeep and pumping the water from the land to accumulate and go delinquent, but at the

same time paying just enough State and County taxes to keep the deeds from becoming due for the same. In this action they were also actively assisted by part of the Commissioners of the District, and through this means they secured ten years' use of the land which had been swamp land and lake bottom of little value until reclaimed, and harvested large crops from it. The Plaintiff, Martin Woldson, owned all the bonds of the District and a large majority of the warrants. He had advanced the money to get the material to dyke the land and had built the dykes. When the time elapsed for the payment of the assessments Martin Woldson demanded that the County authorities proceed to take the deeds as required by law. They refused to do so and after much delay he brought a mandamus action to compel it, pages 60 to 65. The assessments allowed to accrue for the ten years, with interest, amounted to from $80.00 to $90.00 on some land and from $70.00 to $100.00 per acre on other land. pages 70 and 80. In addition to this there was a large amount of other taxes which had accrued so that with the outstanding assessment for bonds still held by Martin Woldson, not levied for, an additional sum of about $30.00 per acre was also a charge against the land, pages 70 to 76. The Court found that the *use value* of the property was sufficient to have paid all these assessments, paragraph XVI., pages 79 and 80, that the drainage system was not being kept up and the land owners were destroying the property, the District's credit, and that the District Commissioners were assisting in these acts, page 80. The Court also

made a scathing denounciation of the County Officials showing the loss which their action had caused Martin Woldson in failing to perform their duties, paragraph XVL, pages 79 and 80. The Court found that the *use value* of the occupancy of the land would have been sufficient to have paid all the levies thereon after the property was subject to being deeded for past due assessments. It also found that Martin Woldson owned $35,000.00 warrants outstanding against the land, "that the action of the commissioners and officials of Boundary County, Idaho, have been such that it will prevent the plaintiff from collecting any part of said warrants whatever, and that had said land been sold when the deeds thereon became due, or shortly thereafter, the plaintiff could have collected the warrants or a good part thereof," page 80.

These findings were made in an action in the State Court in which the Boundary County Officials and the Drainage District Officials were parties, and in which the case was tried on its merits, and was the third case already tried by the State Court in regard to this particular matter. The decision in the first case ordered a writ of mandate issued to compel the County Officials to execute the deeds soon after they became due, pages 43 to 51. The deeds should have been taken in 1932 and 1933, and this order for the first writ of mandate was dated March 25, 1936. Thereafter, another action was commenced by some of the Drainage District Commissioners and others against Martin Woldson and the County Commissioners. This was

also decided in Woldson's favor. The Decree in the case appears pages 53 to 54 inclusive, and is dated April 29, 1938, in which the Court found in favor of Woldson and against the Plaintiff.

In these first two cases the Court in each of them found that all of the things required by law as a prerequisite to the issuing of Tax Deeds had been done so that nothing remained to do but simply to execute the deeds; Findings No. 13, pages 38, first case. The County Treasurer herself testified that she had all the deeds made out at the time the law required them to be issued about 1932 and nothing remained to do but deliver them, page 145. Had they been executed and delivered when this last judgment was entered the County and purchasers would have been entitled to the land to crop it that year, but instead of complying with these orders the County Officials proceeded to give all the notices again and did not take the deeds until in August, 1938, and then refused to sell the same until Martin Woldson had served notice on them and made a written demand. He also made demand upon them, after the deeds were issued, to take charge of the lands and collect the crops, page 55. They refused to do this. He demanded that they sell the land and thereafter they put it up for sale; he bid it in, but they refused to transfer it solely because he did not bid enough therefor, Ex. 1, page 95.

Under the law in force and effect when the bonds were issued the County Commissioners were required to sell the land to the highest bidder. Martin Wold-

son then commenced action to compel them to accept his bid. This was the third case. It was tried on its merits, the State Court making full and complete Findings of Fact and Conclusions of Law, deciding every question in Martin Woldson's favor, and ordering a writ of mandate. That decision is the subject of this suit, pages 51 to 53, Findings and Conclusions, pages 57 to 83 inclusive.

In this Decree it provided, after describing the land, that the deed should be made to the Plaintiff (Martin Woldson).

> "Upon the Plaintiff making payment to said Defendants or to the Treasurer of Boundary County, Idaho, for said property, the amount of said payments *either in cash or its equivalent*, provided, however, that the amount due to Boundary County, Idaho, for State and County taxes shall be paid in cash," page 52.

It provided then the Commissioners should give Martin Woldson notice when the deeds would be ready for delivery to him, page 53.

We think it proper here to call attention to an important provision in the law of Idaho authorizing the payment of bond and interest assessments by past due bonds and interest coupons. Section 41-2565, Idaho Codes Annotated as amended, Session Laws 1933, page 447, which reads as follows:

> "Section 41-2565. The assessments levied by the Commissioners of the Drainage Districts must be paid in lawful money of the United States; provided that warrants of the District may be accepted as cash for the payment of assessments

levied for warrant redemption, and that matured bonds of the District and accrued interest coupons detached from any of the bonds of the District, when presented may be *accepted as cash* in payment of assessment levied for bond interest and principal, and in the event that the said bonds so used are of a greater denomination than the said assessments, the tax collector shall indorse upon said bond or bonds the amount necessary to pay said assessment or assessments and the date of said payment and take a receipt from such bondholder for the amount so credited, and either such receipt describing the bond so indorsed or such indorsement shall be prima facie evidence that the said sum so indorsed has been paid on said bond or bonds."

Woldson contended that this statute was applicable, that the bonds were a first and prior lien as they were authorized and confirmed in 1922, pages 57 and 58. Refunding bonds were issued and confirmed and lien of original bonds continued in full force for the payment of the refunding bonds. The confirmation decree was never appealed from, page 58. Woldson's contention was that the sale was simply a continuation of the collection and payment of the assessments; that his lien was a first and prior lien established by Court Decree in 1922, and therefore superior to all subsequent liens under the laws of Idaho. Within a few days, after the Decree was entered, Dollie Bruce, Clerk of the Board of County Commissioners, gave Martin Woldson notice, as provided in the Decree, that they would execute the deeds and directed him to make the payments as follows: $22,811.33 cash for

State and County taxes, and delivery of $49,232.63 bonds and coupons.

A copy of this notice was Defendant's Exhibit No. 3 identified by the Deputy Clerk as having been given, page 129. It was part of Respondent's designation of portions of record on appeal to Circuit Court, page 283, paragraph 3 thereof, but we are unable to find it in the record. However, the testimony in regard thereto is definite and certain, page 155. The Deputy Clerk testified that this notice had on it the following, "This is in accordance with judgment in case No. 1083"; that was the case referred to. Daisy Kelly testified that No. 3 was a copy of the Auditor's Certificate, page 199. It showed the amount of cash and bonds and interest amounted to $49,232.63, page 149. It was admitted the County got all the bonds, all the interest, and all the cash they demanded at that time, page 157. Mr. Woldson delivered and paid just exactly what the County demanded, page 170. Later they notified him some more bonds should be submitted, that there was an error (page 171), and he sent those to Dollie Bruce.

In all things Woldson had depended upon the County figuring the exact amount and what was desired and acted in accordance therewith. Only a portion of the evidence was in the record in the Circuit Court. Hon. L. B. Schwellenbach, who is the only Judge who heard all the evidence in this case, and who decided it, made full Findings on this particular

question and in his opinion he finds as follows (page 195):

> "Nevertheless the judgment was accepted by the Commissioners of the County and in a few days they notified Woldson that upon the payment by him of $22,811.33 in cash for the State and County taxes and the delivery by him of bonds, interest coupons and warrants in the amount of $49,232.63, for the District charges, that they would cause to be executed and delivered deeds to the property described in the judgment. On December 30, 1938, *in conformity with the judgment,* the County Commissioners caused deeds to the property to be executed and accepted in payment therefor $22,811.33 in cash and $49,232.63 in bonds, bond interest coupons, and warrants of Drainage District No. 1 of Boundary County, Idaho. *No appeal was taken from the judgment.*"

The judgment in the mandamus case was dated December 24, 1938, and the settlement was made in accordance with the District's demand on the 30th day of December, 1938, or just six days after the judgment was entered.

Woldson had pleaded that the appellant was estopped in this case to maintain this action, and on that question Judge Schwellenbach found as follows (page 195):

> "No appeal was taken from the judgment, possession of the land was given to Woldson, drainage district assessments were levied against the property, and paid by Woldson in the amount of $16,250.90, and taxes were levied against the property and paid by Woldson in the amount of $55,580.09. Thereafter on March 8, 1941, with the

induction into office of two new County Commissioners, this action was commenced, etc."

On page 201 Judge Schwellenbach continued:

"The plaintiff, County, through its commissioners, failed to challenge the language of the judgment of December 24, 1938, either by motion for its correction by the Court which entered it, or by appeal. *The evidence is undisputed that the transaction of December 30, 1938, was at the instigation of Plaintiff's officials.* The Defendant had a right to reply and did rely upon the conduct of Plaintiff when he paid $22,811.33 taxes, and delivered for cancellation the $49,232.63 worth of bonds. He had no reason to believe that a change in control of the County would result in the attempted change in position on the part of the County. The evidence is undisputed that after Woldson received deeds to the property the County collected from him a total of $55,580.09 taxes, and the drainage district collected from him in 1939 $16,250.90 drainage district assessments. He was required to spend $1,000 in order to defeat certain homestead claims in the office of Public Lands in Washington, D. C. Believing that he was the owner of this property, he sold a portion of it, and faces the possibility of a damage action by the purchaser in the event his title was invalid."

None of these facts found by Judge Schwellenbach have been challenged in any manner whatever. In Judge Schwellenbach's Findings, pages 208 to 214 inclusive, he again finds all of these facts and finds that the sale of the land was with full knowledge of appellant, and that the purchaser was never made a party to the action. He finds in Findings VIII, page 213, that the appellant accepted the benefit of the judg-

ment with full knowledge of all the facts and that the Drainage District Commissioners were parties to the action in the State Court and knew of the judgment rendered therein, and with full knowledge of all the facts acquiesced in and accepted the full benefits of the judgment. He finds that the County Commissioners themselves construed the judgment and that Martin Woldson accepted the construction that they placed on it, and that both parties acquiesced therein and that the matters involved in that litigation were completely litigated and settled in the litigation, paragraph IX, page 213. As his Conclusions of Law he finds the Idaho Judgment was conclusive and that the appellants are estopped and having acquiesced in the judgment and accepted the benefits they are bound thereby. He then entered a Decree in favor of the respondent.

The evidence completely substantiated all of these things. Among other things it showed that Dollie Bruce conducted the sale of the land for the Commissioners, page 277, Vol. 2. She is the same party that acted for them, gave the notice to Woldson as to what he should pay, and accepted the bonds, page 276, Vol. 2. The bonds in the Treasurer's Office showed that they were cancelled on her records January 6, 1939, the day they were received, by her and all the Boundary County Officials knew it, page 275, Vol. 2, page 277, Vol. 2. Not only that but the District then refused to make a levy for the balance due on Woldson's bonds, which the State Court in that action had found was

due and owing. The District Commissioners gave notice to the County Treasurer not to pay any more on Woldson's bonds from monies on hand or levied for and claimed the right to cancel and take credit for $28,717.00 bonds and coupons which they claim were delivered on the sale and cancelled. This notice was dated May 22, 1942, or about a year and a half after the action in this Court was started, page 235, Vol. 2. Martin Woldson was required to commence a mandamus action in the Federal Court to cancel the levy for these bonds. The findings in that case appear pages 236 to 246, Vol. 2 and on page 240 Judge Cavanah held that the bonds Martin Woldson had paid in on this land sale should be deducted from the amount to be levied for. He further held in that case that Martin Woldson had been overcharged $2,774.81 which he had paid in cash to the County, and sustained Martin Woldson's contention holding that there was still a balance due him, after crediting all monies in the hands of the County Treasurer, levies outstanding and uncollected, in the amount of $17,707.49 for bonds and $9,373.53 interest coupons, and on page 249 ordered a levy therefor. This was the fourth case. Another action was then brought by the Drainage District against the officials of Boundary County regarding this matter, December 2, 1942, in which Woldson intervened and in which the complaint in intervention was introduced in evidence as Exhibit 10, but was not made a part of this record. That is case No. 5.

After Woldson acquired the land the Commission-

ers refused to clean out the ditches so that Woldson's land would be drained, but assessed it for the maintenance charges just the same. He brought an action to compel the cleaning out of the ditches which is reported in 132 Fed. 2nd, page 622. That was the sixth case and with this one makes seven cases already prosecuted over this matter, it all being based on the neglect and refusal of the Drainage District Commissioners and the County Commissioners and County Officials acting in conjunction with each other in refusing to perform their statutory duties.

Daisy Kelly, the Treasurer, testified that after these bonds had been delivered by Mr. Woldson no levy was ever made for them and they appeared cancelled on her records, pages 277 to 278.

ARGUMENT AND AUTHORITIES

We are endeavoring to limit this reply only to those things which will give the Court a bird's-eye view of the facts, then the law on these facts, to show that there is nothing involved which would warrant this Court in taking jurisdiction herein.

As to the law, we will make no lengthy argument.

Plaintiff is not interested, and therefore has no right to maintain this action. The Drainage District, through its Commissioners, were parties to the action in the State Court, acquiesced in the judgment, accepted its benefits, and neither moved for a new trial nor appealed, and the Plaintiff herein acted likewise, but there is this difference; this Plaintiff has no in-

terest in the case. The sale was solely for drainage district assessments but the bid provided the amount of the State and County taxes should be paid first therefrom. As the Plaintiff got absolutely everything it was entitled to it has no interest. As the other defendants accepted what was adjudged due them and did not appeal but acquiesced in the judgment the Plaintiff has no right to maintain the action as the action must be prosecuted by the real party in interest.

Lawyer v. Post, 109 Fed. 512;

United States v. Fuller, 14 Fed. (2nd) 812;

Higging v. Swygman, 141 N. E. 788;

Lefebure v. Baker, 220 Pac. 111;

Asplund v. Hannett, 249 Pac. 1074;

Hedin v. Westdala Lutheran Church, 59 Ida. 241-81 Pac. (2nd) 741;

Stewart v. Price, 64 L. R. A. 581;

Dixon v. Gries, 39 Pac. 857;

City of Chelsea v. Treasurer, 130 N. E. 397.

Therefore as Boundary County has no interest and neither stands to win or lose it cannot prosecute, as the action must be prosecuted in the name of the real party in interest and that is not the Plaintiff.

Again Respondent sold considerable of the property, after it was deeded to him. The County knew this, collected taxes, and assessments from the purchaser but did not make the purchaser a party to the suit, and as his interest would be affected by any judgment cancelling Woldson's deeds, it is fatal to the Plain-

tiff maintaining the action. *Idaho Irrigation Company v. Dill*, 25, Idaho 711-139 Pac. 714, where the rule is stated as follows:

> "It is elementary that if a person is not made a party to an action, his rights cannot be determined or *affected* by a judgment or Decree entered in such cases."

Judge Schwellenbach, in his opinion, page 202, calls attention to this sale and in Findings VI, 212, he finds:

> "He sold a part of said land to one F. E. Vinion and said Vinion went into possession of the same with the full knowledge of Plaintiff, and that the said Vinion was never made a party to this action."

SALE OF PROPERTY BUT CONTINUATION OF COLLECTION OF ASSESSMENT:

In view of the fact that the Idaho statute specifically provides for matured bonds and interest coupons to be "accepted as cash," in payment of assessments therefore, the bonds were property so applied, as the sale was for the assessments for the bonds and interest coupons and it is but a part of the scheme for collection. This is the law in Idaho.

Washington County v. Paradis, 38 Idaho 364-367-222 Pac. 775:

> "The authorities are to the effect that a County does not acquire a vested right in property by virtue of a tax sale to it for delinquent taxes, and that such a purchase of property by a County

goes no further than to perpetuate the lien of the tax *and is in aid of collection.*"

That is the general rule.

"Its purchase was in perpetuation of the lien and in aid of collection, etc."

Essex Public Road Board v. Shinkle, 140 U. S. 343-35 L. Ed. 447.

The bonds are confirmed by Decree of the Court and constitute a lien on the land and the lien attaches to the money collected when the property is sold.

"The bonds succeed to the lien of the original assessment, and the assessments thereafter levied and collected are a trust fund *pledged by law* for the payment of the bonds, * * *. Assessments collected are public funds, impressed with a trust in favor of the bondholders."

Meyer v. City of Idaho Falls, 52 Idaho 81-87-11 Pac. (2nd) 626.

"All monies collected by the Treasurer, whether on account of installments, penalties, interest or sale of lands, must be by him paid into the Treasury *for the benefit of the bondholders.*"

River Farms Co. v. Gibson, 42 Pac. (2nd) 95-100.

To hold otherwise would be to allow a vested legal right and a valid lien of one party to be taken and destroyed for the benefit of the other. This is not permitted in Idaho.

"Giving the statute such a construction, it authorizes and requires the taking of the property of one citizen to pay the debt of another. Not only this, but it renders possible the complete wiping out and destroying of contracted rights.

Such a statute, if thus construed, would be abhorent to natural justice."

Scottish American M. Co. v. Minidoka Co., 47 Idaho 32-44-272 Pac. 498.

In Idaho special improvement bonds ARE PARAMOUNT TO ALL OTHER LIENS, EXCEPT ALONE GENERAL STATE OR CITY TAXES.

"The lien of the bonds upon the lands of an improvement district *becomes fixed and paramount to any other liens*, excepting those of the general State, County and City taxes."

Bosworth v. Anderson, 47 Idaho 697-711-280 Pac. 277.

It is a General Rule That An Assessment Which is First in Point of Time is Paramount to Later Assessments or Liens.

"At Common Law priority of liens as a rule was fixed by the time the liens attached to the subject matter, but, as to the statutory liens, a different rule as to priority *may* be fixed by the statute creating them."

Brownell Imp. Co. v. Nixon, 92 N. E. 693.

No other rule is fixed by statute in Idaho, and by express statutory provision the common law is the law of the State, except where changed by statute.

Idaho Codes Annotated, 70-116;

Kelly v. Easton, 35 Idaho 340-343-207 Pac. 129;

Drake v. Earhart, 2 Idaho 750-23 Pac. 541.

"It is a well settled rule as to both legal and equitable liens, that in the absence of statutory regulations to the contrary, that the lien which is

prior in time gives a prior claim and is entitled to satisfaction out of the subject matter before other subsequent liens binding the same property."

Parker-Washington Co. v. Corcran, 129 S. W. 1031.

"The rule in the absence of statutory provision to the contrary, is that liens take precedence in the order of time; the first in point of time being superior, * * *. This order of priority will not be disturbed or altered, *unless expressly provided by statute.*"

Des Moines Brick Mfg. Co. v. Smith, 79 N. W. 77.

"The principle is believed to be universal, that a prior lien gives a prior claim, which is entitled to prior satisfaction out of the subject it binds, * * *."

Rankin & Schotzell v. Scott, 12 Wheaton 117-6 L. Ed. 592.

"Priority of lien certainly gave priority of legal right, just as in the case of a first and second mortgage.

Between equal equities the first in order of time shall prevail."

Howard v. Mil. St. Paul Ry. Co., 101 U. S. 837-25 L. Ed. 1081.

This rule is sustained by the following authorities:

Scott-McClure Land Co. v. City of Portland, 125 Pac. 276;

Bibbins v. Clark, 57 N. W. 884;

Smith v. Skow, 66 N. W. 893;

Bell v. City of New York, 73 N. Y. S. 298;

Bank of Quapaw v. Denney, 225 Pac. 362;

Paik v. Chung, 211 Pac. 727;

Ferris v. Alice Mint Gum Co., 124 Atl. 577;

Sloat v. Midwest Finance Co., 189 N. W. 52.

These were the questions that were before the Idaho Court. The Court determined the issue in favor of Woldson and held and adjudged he could pay either in cash or its equivalent, and by the Idaho Statute, where the assessment is for bonds and interest, the mature bonds themselves and the interest coupons are the equivalent of cash. The land was sold solely for Drainage District assessments, but a part of it was for warrants of which Woldson held those entitled to be first paid. The assessment for the bonds was levied about six years before the assessment for the warrants. The sale was not sufficient to pay the bond assessments alone but left a deficiency of $13,058.27 (Judge Cavanah's Decree in a later case, page 240). Judge Elder in the case compelling the sale found as to each tract that the bid was fair and all the land was reasonably worth, inserting this provision after the finding as to each tract of land:

> "And the Court finds that the Plaintiff's bid for said land was fair and all that said land was originally worth." Page 72.

The only pretense and claimed defense set up by the petitioners in that case was that Martin Woldson did not bid sufficient to cover *all* taxes against the land. Exhibit 1, page 95. The bid was rejected for no other reason.

Woldson held the first warrants, which would be entitled to be first paid as they are paid in order of priority under the statute, and as to these the Court found:

> "That the action of the Commissioners and the Officials of Boundary County, Idaho, has been such that it will prevent the Plaintiff from collecting any part of said warrants whatever." (Page 80).

Most certainly with a deficit of $13,058.28 on the bonds and nothing to pay on the warrants first entitled to be paid, every one knew the payments were to be applied for mature bonds and interest coupons, and following this Decree and within six days, the Petitioner notified Woldson in writing to turn in $49,232.63 bonds, and $22,811.33 cash. Judge Schwellenbach's opinion, page 195, and his Findings V, page 211. There can be no doubt they knew what it meant and so construed it and both parties acted on it and the Court so found. Findings IX, page 213.

It is Respondent's Contention That Not Having Appealed from the Judgment of the State Court, Such Judgment is Res Judicata and Conclusively Binding on Petitioner In This Case.

This is a collateral attack on the judgment of the State Court. Page 199.

> "In this case Plaintiff asks collateral to attack a judgment of the Court of the State of Idaho. No appeal having been taken from the judgment, it was final and binding."

On this appeal this Court is not concerned as to the question of whether the judgment is right or wrong, erroneous or correct. Appellants had their day in Court, the case was decided against them, was not appealed from and is binding and conclusive. This

Court does not act as a Court of Appeals from the State Court's judgment, but the judgment concludes the parties thereto. The Court of Idaho even hold that where the questions might and should have been litigated the judgment is conclusive.

Joyce v. Murphy Land Co., 35 Idaho 549-208 Pac. 241, Court held that every question settled "which might and should have been litigated in the first suit."

> "The doctrine of *Res Judicata* applies to all questions which *might* have been raised as well as to all questions which were raised in the prior workman's compensation proceedings."
>
> *Zapantis v. Central Idaho M. & M. Co.*, 136 Pac. (2nd) 154.

In an early case an Idaho Court stated the reason for this rule in this language:

> "A contrary doctrine, as it seems to me, subjects the public's peace and quiet to the will or neglect of individuals, and prefers the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness."
>
> *Elliot v. Porter,* 6 Idaho 684-59 Pac. 360.

The very able opinion by Judge Schwellenbach so clearly and conclusively disposes of this question (pages 199 to 201), it would seem nothing further should be said. He quotes the opinion by Judge Cavanah in the case of *Sunshine Mining Co. v. Treinies, et al.,* 19 Fed. Supp. 587, and it is especially fitting where Judge Cavanah in that opinion quotes from Mr. Justice Robert's opinion in *Baldwin v. Iowa State Tr.*

Men's Association, 283 U. S. 522-525-75 L. Ed. 1244 as follows:

> "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties."

The statement also from Judge Mathew's decision in the same case as *Treinies v. Sunshine Mining Co.,* when that case reached the Circuit Court, 99 Fed. (2nd) 651-655 where he said:

> "Whether the issues determined by the Idaho (401) Decree were rightly or wrongly determined is no longer open to inquiry having been rendered by a Court which had jurisdiction to render it, and having long since become final, that Decree, *even though erroneous,* is valid and conclusive on the parties thereto and all persons claiming under them."

This followed further by the very distinct statement of this rule of law by Mr. Justice Reed when this case reached this Court (308 U. S. 66, 78) as follows:

> "One trial of an issue is enough. The principles of Res Judicata apply to questions of jurisdiction as well as to other issues, as well to jurisdiction of the subject matter as of the parties."

The following cases also fully support the rule which is one universally and generally followed in all courts:

Ex parte Moran, 144 Fed. 594, C. C. A.;

Fayerweather v. Ritch, 91 Fed. 721, C. C. A.;

So. Pac. R. Co. v. U. S., 168 U. S. 1-42 L. Ed. 355;

U. S. v. Brown, 281 Fed. 657, C. C. A.;

Lineker v. Marshall, 7 Fed. (2nd) 875 9th, C. C. A.;

Roach v. McDonald, 275 U. S. 449-72 L. Ed. 365;

Stoll v. Gottlieb, 305 U. S. 165-83 L. Ed. 104.

These are but a few of the cases on this subject which is one of such general application. We think in light of the statement of facts and authorities in Judge Schwellenbach's opinion there should be no room for doubt as to its being applicable to this case.

PETITIONERS ARE ESTOPPED

Estopped by accepting the benefits under a judgment, or by accepting the decision and acting thereunder, and thereby causing the other party to change his position, are well established rules. Where one is ordered by Writ of Mandate to do an act, accepts the Court's decision and both parties act thereunder, the defendant cannot thereafter even appeal from that decision, much less be heard to attack it in a collateral proceeding as is attempted to be done here. Judge Schwellenbach clearly set out the reason of the rule as applied to this case, page 195. The petitioners themselves notified Woldson how much in bonds to pay and how much in cash and Woldson acted in full compliance with the petitioners' demand, made the payments and the deeds were executed and possession delivered to Woldson, December 30, 1938, or just six days after the judgment was rendered, page 195, Find-

ings V, page 211. The bonds were then delivered and cancelled of record. Woldson sold part of the land to one Vinion. Thereafter petitioners demanded of Woldson, as owner of this land, $16,250.90, additional Drainage District assessments, and $55,580.09 other taxes, and Woldson paid the same, Findings VII, page 213, Judge Schwellenbach's decision, pages 201-202. Homestead entries were filed on the lake bottom reclaimed, which was part of the land Woldson purchased, and he spent $1,000.00 contesting these before the Commissioners of Public Lands in Washington, D. C., page 202. Over one-half of the land had become a solid weed patch, and on 87 acres it could not be cut because thereof, page 254. It was not capable of being cropped, page 255. Woldson devoted time and expense to reclaiming the land from the weeds so it could be farmed, and with large Diesel track layer engines and heavy machinery plowed and cultivated the land 16 to 18 times during the season to eradicate the Canadian thistle, quack grass and noxious weeds with which the land had become covered, pages 256-258. He lost $51,051.60 in his operation in farming due to this, page 273. Not until after these things had been done and two new Commissioners came into office was any objection ever made. We think no case has ever been presented showing stronger equitable grounds for Estoppel than this.

In this regard the rule of Estoppel in Idaho is fully effective against Counties and the State itself.

"It is also well established that a municipal

corporation may, by its conduct or the conduct of its officials and agents, be estopped to assert its claim to title of property."

Robinson v. Lemp, 29 Idaho 661-161 Pac. 1024.

"and substantial considerations underlying the doctrine of equitable estopped applies to the Government as well as to individuals."

State v. Twin Falls Sal. River L. & W. Co., 30 Ida. 41-166 Pac. 220.

The County Commissioners have the authority in Idaho to settle any case.

"Under the powers given to the Board of Commissioners it may settle a case pending against the County, on appeal, and where they do settle such case, and it appears from the record that no beneficial results can accrue to the County from a determination of the appeal, the appeal will be dismissed on motion."

Board of County Commissioners v. Bassett, 14 Idaho 324-93 Pac. 774.

Under this authority the Board of Commissioners, as then constituted, had a right to settle the case. The Commissioners of the Drainage District were parties to this suit, and acquiesced in the settlement, page 195. Where Judge Schwellenbach states:

"Nevertheless the judgment was accepted by the Commissioners of the County *and the Drainage District.*"

Again on page 206 he says:

"The Commissioners of the Drainage District acquiesced in and the Drainage District accepted the benefits of the transaction of December 30, 1938."

And on the same page he says:

> "Furthermore, in 1939, the Drainage District collected $16,250.90 assessments from the defendant."

The sale was for the Drainage District assessments only, as appears from the recitals in the Commissioner's Deed, page 12, but the bid included the State and County taxes which had attached to the land, and this, of course, went to the County. As the District acquiesced in the judgment and never appealed therefrom, and as the County not only got every cent it had coming for taxes, and, as found by Judge Cavanah in the case to compel a levy to pay the balance of Woldson's bonds, page 240, were overpaid a large sum, more than they had coming. What beneficial interest could accrue to the County in this case? Wherein did a new Board have the right to set aside an act of a former Board in which the County no longer had any interest, and start this suit without the Drainage District being a party?

It is fundamental that a judgment in mandamus settles the rights of the parties and is conclusive where not appealed from, and a compliance therewith settles the case for all purposes.

Alarid v. Romero, 25 Pac. 788;

Leet v. Board of Supervisors, 47 Pac. 595;

Campbell v. Hall, 69 Pac. 12;

San Diego School District v. Board of Supervisors, 32 Pac. 517.

But Accepting the Benefits of a Judgment, It Estops the Party from Challenging It on Any Ground.

> "Held, that having accepted the amounts adjudged to them, they were estopped from questioning the validity of the judgment."
> *Hunt v. Wright*, 139 S. W. 1007.

> "Principle of estoppel applies as well to judgments void for want of jurisdiction as to judgments in other cases."
> *Cape Girardeau T. R. Co. v. So. Ill. & Mo. B. Co.*, 114 S. W. 1084.

> "Estoppel. One cannot accept benefits of a decree without admitting its legality."
> *Morgan v. Morgan*, 283 S. W. 979.

The following cases fully sustain Respondent's contention in this regard:

> *James v. City of Seattle*, 106 Pac. 1114;
> *State Bank of Chicago v. Idaho-Oregon L. & P. Co.*, 219 Fed. 594;
> *Officer v. J. L. Owens Co.*, 252, Fed. 337, C. C. A.;
> *Stillman v. Gorman*, 69 Alt. 601;
> *McCune v. Goodwillie*, 102 S. W. 997;
> *Sage v. Finney*, 135 S. W. 996;
> *Horst v. Barrett*, 104 So. 530-533;
> *James v. Park*, 271 S. W. 370-372;
> *State v. Elkin*, 270 Pac. 875;
> *Gillespie v. Wilson*, 221 Pac. 82;
> *Johnson v. Ray*, 222 Pac. 667;
> *Pac. Mill & M. Co. v. Lette*, 94 Fed. 968-974.

and the other authorities cited in Judge Schwellenbach's opinion on Estoppel generally.

SUMMARY

Here the Appellant faces all these legal difficulties. They accepted the judgment, put their own construction on it, gave the Respondent written notice what amount of bonds to present and what cash to pay, and he paid accordingly. They notified him that they had made a mistake and to produce more bonds, which he did, and Judge Cavanah found that they had overcharged him a large sum on the cash collected. He relied entirely on their action and Judge Schwellenbach so found, page 195, Findings No. 5, page 211. Both Petitioner and the Drainage District, which was the real party in interest, and which was a party to the suit complained of, but is not a party to this action, acquiesced in the judgment, accepted the payments demanded by them, and then in addition to that the following year the District collected from Woldson $16,250.90 assessments on the land sold, and the County collected taxes in the sum of $55,580.09, or a total collected from him the following year after the sale of $71,830.99, and certainly having accepted the judgment and secured this large sum of money they should not now in good conscience be allowed to repudiate their own acts, wherein they have secured this benefit. But further than that, the Court found that Woldson relied on this and spent $1,000.00 on account of Homestead contests before the Commissioner of Public Land, page 202. He sold a considerable portion of the land, page 202. The land had been allowed to become foul with noxious weeds, was not worth crop-

ping, and Woldson started a program of 16 to 18 plowings and cultivations of the land a year to eliminate the weeds so the land could be used, and lost $51,051.60 in doing this, page 273. All this was known to the Drainage District and the County, and if there ever was a case calling for the invoking of the doctrine of estoppel, certainly this is it.

We have refrained from citing many of the leading, very pointed cases relied upon by Judge Schwellenbach in his Opinion, in the interest of brevity, and we especially direct the Court's attention to his very logical decision, pages 199 to 206 inclusive, and the authority there cited covering the points raised in this case. We think this opinion, based upon the facts as he found them, and the law as it exists, is conclusive.

The Petitioner presents the questions raised by them as if your Honors were sitting as a Court of Appeals to decide whether the Trial Court in Idaho, from whose judgment no appeal was ever taken, had correctly interpreted the Idaho law. We respectfully submit that question was solely for the Idaho Trial Court, and no one else, when no appeal was taken therefrom. We further respectfully submit that if the Petitioners felt themselves aggrieved by that decision, the Respondent had the absolute right to have that question taken to the Idaho Supreme Court for its decision, and Petitioners cannot evade so doing by any known procedure, and then attempt to re-litigate the question in any other Court. That having complied with that judgment, and all parties having acquiesced

therein, and the Drainage District having done likewise, that these Petitioners, not being the real party in interest, and having secured everything that they claimed they had coming, under no circumstances can maintain another action and are estopped so to do.

We respectfully submit this case presents no new or novel questions of law and nothing has been suggested in Petitioners' Brief which would justify this Court accepting jurisdiction and therefore their application for Certiorari should be dismissed.

Respectfully submitted,

EZRA R. WHITLA,
Residence and P. O. Address,
Coeur d'Alene, Idaho,

E. T. KNUDSON,
Residence and P. O. Address,
Coeur d'Alene, Idaho,
Attorneys for Respondent.